

EA



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,460	03/22/2004	Harriet Kirkpatrick	047144/275346	2926

826 7590 07/29/2005

ALSTON & BIRD LLP  
BANK OF AMERICA PLAZA  
101 SOUTH TRYON STREET, SUITE 4000  
CHARLOTTE, NC 28280-4000

EXAMINER

PALO, FRANCIS T

ART UNIT	PAPER NUMBER
----------	--------------

3644

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

EA

<b>Office Action Summary</b>	<b>Application No.</b> 10/807,460	<b>Applicant(s)</b> KIRKPATRICK, HARRIET	
	<b>Examiner</b> Francis T. Palo	<b>Art Unit</b> 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-39 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

A

**DETAILED ACTION**

***Election/Restrictions***

**Restriction to one of the following inventions** is required  
under 35 U.S.C. 121:

- I. Claims 34-37, drawn to a method of preventing users from tripping over a tent stake at an event, classified in class 47, subclass 66.7.
- II. Claims 1-33 and 38-39, drawn to a planter, classified in class 47, subclass 66.3.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as product and process of use.

The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)).

In the instant case the process for using the product can be practiced with another materially different product, specifically, hay bales.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

**This application contains claims directed to the following patentably distinct species of the claimed invention:**

Invention-II:

Species-I: A Modular Planter Kit comprising three panels and fasteners;  
as represented by claims 1-22 (and further comprising sub-species).

Species-II: A Modular Planter comprising a plurality of panels and fasteners for  
selectively assembling and disassembling a barrier by hand without  
the use of tools; as represented by claims 23-33.

Species-III: A Modular Planter Kit comprising four panels and fasteners;  
As represented by claims 38-39.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

**Currently, no claim(s) appear to be generic.**

**If Applicant elects Invention-I (Method)** no further election of species is required.

**If Applicant elects Invention-II (Planters)** one of the three Species outlined above is required for further election (and one of the listed sub-species under Species-I or Species-II is further required to be elected, as outlined below).

**Species-I:** Further election of one of the following species is required if Species-I is elected;

Species-Ia: as represented by claims 1 and 9-13.

Species-Ib: as represented by claims 1, 9 and 14.

Species-Ic: as represented by claims 1 and 5-7.

Species-I<sub>d</sub>: as represented by claims 1, 5 and 8.

Species-Ie: as represented by claims 1 and 15-16.

Species-If: as represented by claims 1 and 17-18.

Species-Ig: as represented by claims 1 and 21-22.

Species-Ih: as represented by claims 1-5, 9, 15, 17 and 19-21.

**Species-II:** Further election of one of the following species is required if

Species-II is elected;

Species-IIa: as represented by claims 23 and 25-27.

Species-IIb: as represented by claims 23 and 31-32.

Species-Iic: as represented by claims 23-25, 28-31 and 33.

**For example:**

Applicant elects **Invention-II** (Planters; Species I-III, claims 1-33, and 38-39).

Applicant further elects **Species-I** ( comprising Species Ia-Ih, claims 1-22).

Applicant further elects **Species-Ih** (claims 1-5, 15, 17 and 19-21).

If claim-1 is allowed (or rewritten to include an allowable dependent claim) all its dependent claims are recaptured and passed to issue, with Species-II and Species-III relegated to Continuation Applications for further prosecution before the Patent Office.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added.

An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141.

If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case.

In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu., Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Francis T. Palo*

Francis T. Palo  
Examiner  
Art Unit 3644